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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,625	06/02/2000	Carlos F. Barbas III	22908-1227B	6568
20985	7590	12/05/2005	EXAMINER	
FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			MURPHY, JOSEPH F	
		ART UNIT	PAPER NUMBER	
		1646		

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/586,625	BARBAS ET AL.	
Examiner	Art Unit		
Joseph F. Murphy	1646		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 13 June 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-3,5-21,23,24,26-46,69 and 73 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 1-3, 5-6, 8, 10-27, 32-35, 37-39, 41-42, 44, 46, 69-89 is/are allowed.

6)  Claim(s) 28-31 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Formal Matters***

Claims 1-3, 5-6, 8, 10-35, 37-39, 41-42, 44, 46, 69-89 are pending and under consideration.

### ***Response to Amendment***

The rejection of claims 1-3, 5-21, 23-24, 26-46, 69, 73 under 35 U.S.C. 102(b) as being anticipated by Scheller et al. (1998) has been obviated by Applicant's amendment and is thus withdrawn.

The rejection of claims 1-3, 5-6, 8, 10-21, 23-35, 37-39, 41-42, 44, 46, 69-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scheller et al. (1998) in view of Sibson et al. (WO/9401548).

New issues are set forth below.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 28-31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims as written read on host cells, including eukaryotic and animal cells. There is no limitation wherein the host cells are isolated or in culture, therefore the claims read on transfected cells in a human, and thus are not patentable subject matter. This rejection could be obviating by adding a limitation wherein the host cells are isolated or in culture.

***Conclusion***

Claims 28-31 are rejected.

Claims 1-3, 5-6, 8, 10-27, 32-35, 37-39, 41-42, 44, 46, 69-89 are allowable.

***Advisory Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Murphy whose telephone number is (571) 272-0877. The examiner can normally be reached Monday through Friday from 7:30 am to 5:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached on (571) 272-0829.

The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph F. Murphy, Ph. D.  
Primary Examiner  
Art Unit 1646  
November 30, 2005



JOSEPH MURPHY  
PATENT EXAMINER